FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FCP/147221

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a hearing was held on April 30, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee County Department of Family Care correctly determined Petitioner's level of care to be non-nursing home.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Leah Veenedaal, Case Manager; Karen Gradeci, RN; Jenny Zurawski, RN,
Project Access CMU
Rosaida Shrank, QI Coordinator
Milwaukee County Department of Family Care - MCO
901 N. 9th St.
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. On January 31, 2012, a Long Term Care Functional Screen (LTCFS) was completed with Petitioner. At that time, Petitioner was found to be at a nursing home level of care because she reported needing assistance with all activities of daily living (ADLs), including bathing, dressing when clothing has fasteners, hooks or zippers, with eating, with mobility, toileting and transferring. Petitioner also reported needing assistance with Instrumental ADLs (IADLs) including meal preparation, medication administration, money management and laundry. This LTCFS also indicated that Petitioner had issues with memory and cognition. (Exhibit 5, pgs. 2-8)

3. On January 30, 2012, a new LTCFS was done after Petitioner switched Care Management Units (CMUs) from Easter Seals, to Project Access. At this time, Petitioner reported that she was now independent with all ADLs, except that she needed assistance with bathing on bad days. Petitioner reported using a shower chair. Petitioner also reported being independent with most IADLs, except that she needed assistance with shopping and transportation. At this time, no issues with memory or cognition were noted. As a result, Petitioner was found to be at the non-nursing home level of care. (Exhibit 5, pgs. 9-15)

4. On January 29, 2013, the Milwaukee County Department of Family Care (MCDF) sent Petitioner a Notice of Change in Level of Care, advising her that her level of care dropped to non-nursing home level of care. (Exhibit 1, pg. 2)

5. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 6, 2013. (Exhibit 1)

6. Petitioner requested a rescreen, which was completed on March 28, 2013, which Petitioner indicated was a "bad day" for her, health wise. At this time, Petitioner reported being independent in all ADLSs and demonstrated her ability to walk to her bathroom without her cane, get into her tub, sit on her shower chair, push herself up and get out of tub without assistance. Petitioner also reported being independent with her IADLs, except for needing assistance with grocery shopping, carrying her laundry basket and transportation. Consequently, Petitioner was again found to be at the non-nursing home level of care. (Exhibit 5, pgs. 23-29)

DISCUSSION

Petitioner did not dispute the accuracy of the information she provided to the CMU when the current LTCFS were completed. However, Petitioner filed an appeal, because she disagreed with the agency's determination that her level of care has dropped from nursing home level of care to non-nursing home level of care. The terms "nursing home level of care" and "non-nursing home level of care" are given general definitions in Wis. Stats §46.286(1)(a):

> **(a)** *Functional eligibility.* A person is functionally eligible if the person's level of care need, as determined by the department or its designee, is either of the following:
>
> **1m.** The nursing home level, if the person has a long-term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision.
>
> **2m.** The non-nursing home level, if the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

In further defining levels of care for the Family Care Program, Wis. Admin. Code §10.33(2)(c) and (d) refers to "nursing home level of care" as "Comprehensive functional capacity" and it refers to "non-nursing home level of care" as "intermediate functional capacity":

Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
    a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
    b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self-neglect or resistance to needed care.

Intermediate functional capacity level. A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:

1. One or more ADL.
2. One or more of the following critical IADLs:
    a. Management of medications and treatments.
    b. Meal preparation and nutrition.
    c. Money management.

Applying to the above definitions, the information provided by Petitioner in the most recent Long Term Care Functional Screens, Petitioner falls into the Intermediate Functional Capacity/Non-nursing home level of care, because she is independent in her ADLS, but needs assistance with meal preparation, in terms of grocery shopping.

CONCLUSIONS OF LAW

The Milwaukee County Department of Family Care correctly determined that Petitioner's level of care dropped to non-nursing home level of care.

THEREFORE, it is ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee, Wisconsin, this 6th day of May, 2013.

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\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 6, 2013.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion